

DEC 4 1975

In the Supreme Court of the United States

MICHAEL RABAK, JR., CLERK

OCTOBER TERM, 1975

No. 75-623

TED BUTLER AND EMIL PETERS,
Appellants,

vs.

RICHARD C. DEXTER,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

**SUPPLEMENTAL JURISDICTIONAL
STATEMENT**

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December 3, 1975

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-623

TED BUTLER AND EMIL PETERS,
Appellants,

vs.

RICHARD C. DEXTER,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

**SUPPLEMENTAL JURISDICTIONAL
STATEMENT**

Appellants' Jurisdictional Statement in this case was filed in the Supreme Court of the United States on October 24, 1975. At that time judgment had not yet been entered by the United States District Court for the Southern District of Texas, and appellants appealed only from the District Court's opinion and order of July 3, 1975, and the amendment thereto of August 29, 1975. A final judgment was entered by the District Court on November 4, 1975. Appellants therefore submit this Supplemental Statement to include as part of their appeal the final judgment and to update their previous statement of the case.

SUPPLEMENTAL STATEMENT OF JURISDICTION¹

On November 4, 1975, the District Court entered a final judgment which is attached hereto as Appendix S-A. Appellants filed their third notice of appeal on November 11, 1975. This notice of appeal is hereafter attached as Appendix S-B.

SUPPLEMENTAL STATEMENT OF THE CASE²

On the date of filing of the original Jurisdictional Statement in this cause, the three-judge court had not entered final judgment although an opinion and order imposing a final injunction had been entered some three and one-half months previously.

On November 3, 1975, appellants filed a *fourth* motion requesting that the three-judge court enter a final judgment or vacate its order.

On the following day, November 4, 1975, the three-judge court entered final judgment in this cause and the two others which it reached on the merits.

On November 11, 1975, appellants filed a third notice of appeal from the final judgment as a precautionary measure to preserve the jurisdiction of the Supreme Court of the United States to consider all matters ruled upon by the District Court, including its final judgment.

1. See page 2 of the Jurisdictional Statement.
2. See pages 4-14 of the Jurisdictional Statement.

On November 24, 1975, appellee secured a two-week extension of time to file his motion to dismiss or affirm.

At present, appellants continue to suffer the consequences of an injunction that has been in effect in one form or another since July 29, 1974.

Respectfully submitted,

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December 3, 1975

CERTIFICATE OF SERVICE

I, Keith W. Burris, hereby certify that three (3) copies of this Supplemental Jurisdictional Statement were mailed by United States Mail, postage prepaid, to Gerald Goldstein, attorney for appellee, 2900 Tower Life Building, San Antonio, Texas 78205, on this the 3rd day of De-

cember, 1975. I further certify that all parties required to be served have been served.

KEITH W. BURRIS
Assistant Criminal District
Attorney
Bexar County, Texas
Bexar County Courthouse
San Antonio, Texas 78205

APPENDIX

APPENDIX S-A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 73-H-528

UNIVERSAL AMUSEMENT CO., INC., JOE SPIEGEL,
JOHN W. COLES, JAMES OHMART, ERNEST GEILLE,
JR., BONNIE MOORE, and EDNA BRASHEAR

v.

CAROL VANCE, HERMAN SHORT, CAPTAIN JAMES
M. ALBRIGHT, TROY R. DRISKELL, and JUDGE I. D.
McMASTER

FINAL JUDGMENT

King Arts Theatre v. McRea, CA-6-345

In accordance with this court's memorandum opinion in the above-styled-and-numbered consolidated cases, entered on July 3, 1975, it is hereby ORDERED that the Texas statute designated as article 4667 (a) (3) of Vernon's Annotated Civil Statutes is unconstitutional on its face.

Richard Dexter v. Ted Butler, SA 74-CA-168

Also pursuant to this court's memorandum opinion of July 3, 1975, having concluded that § 16.01 of the Texas Penal Code was applied in an unconstitutional manner to

the plaintiff, this court ENJOINS the state from prosecuting plaintiff Dexter on the pending felony charges pursuant to § 16.01 with regard to incidents occurring on June 24, June 28, and July 2, 1974. The scope of this injunction includes a restraint on any future prosecution of any motion picture exhibitor, pursuant to § 16.01, for possession or use of equipment which can be used for any lawful purpose.

Ellwest Stereo Theatre, Inc. v. Donald Byrd, et al., CA-3-74-130-E

Further, in accord with this court's memorandum opinion of July 3, 1975, it is hereby ORDERED that the language "or commonly used in" in the Texas Statute designated as article 18.02(2) is unconstitutionally vague and overbroad and is unconstitutional as applied to Ellwest Stereo Theatres, Inc., or to any other individual or entity engaged in first amendment activities.

DONE at Houston, Texas, on the 4th day of November, 1975.

/s/ Joe Ingraham

Joe Ingraham

Circuit Judge

/s/ John V. Singleton

John V. Singleton

United States District Judge

/s/ W. M. Taylor, Jr.

W. M. Taylor, Jr.

United States District Judge

APPENDIX S-B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 73-H-528

UNIVERSAL AMUSEMENTS, ET AL,

v.

CAROL VANCE, ET AL,
CONSOLIDATED WITH

CIVIL ACTION NO. SA-74-CA-168

RICHARD C. DEXTER,

v.

TED BUTLER, ET AL

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Ted Butler, et al, defendants in the above entitled and numbered cause, hereby appeal to the Supreme Court of the United States from

the final judgment granting a permanent injunction, filed in these causes on November 4, 1975.

This appeal is taken pursuant to 28 U.S.C. § 1253.

Dated: November 10, 1975.

Ted Butler
Criminal District Attorney
Bexar County, Texas

Nelson Atwell
Assistant Criminal District Attorney

Douglas C. Young
Assistant Criminal District Attorney

/s/ Keith W. Burris
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